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September 24, 2021

Third Court of Appeals
Austin, Texas

VIA: Electronic Filing

**Re: Cause No. 03-18-00153-CV; Texas Department of
Transportation v. Albert Lara, Jr.**

To the Honorable Court:

Lara provides this brief reply to correct three points raised in
TxDOT's Letter of September 17.

First, TxDOT misstates the scope of review. *Letter*, p. 1 ("[Lara]
implies that the only outstanding issue...[is] causation."). But there's
nothing implied about it. That is precisely what the Supreme Court of
Texas said. "Lara's ability to proceed on his Section 21.051 claim
therefore turns on causation." *Opinion*, p. 25.

And that makes sense, as both this Court and the Supreme Court
of Texas have already held that Lara was (1) a qualified individual (2)
with a disability. Thus, the only remaining element is whether TxDOT
terminated Lara because of his disability, that is, causation. Here too,
TxDOT misstates the standard, claiming that Lara must show that
TxDOT fired him "solely" because of his disability. *Letter*, p. 1. Lara must
simply show that TxDOT fired Lara "because of" his disability, meaning
that it was a "motivating factor." TEX. LABOR CODE §§ 21.125(a), §21.051;
Quantum Chem. Corp. v. Toennies, 47 S.W.3d 473, 482 (Tex. 2001). And
at this stage, Lara must simply present a fact issue on the point.

Second, TxDOT tries to relitigate the reasonableness of firing Lara, suggesting it established a legitimate, non-discriminatory reason as a matter of law. But TxDOT admitted that it fired Lara because of his “limitations” as outlined in his medical paperwork. CR.392-93; 442. An employer’s admission that it fired an employee *because of* his disability is the opposite of a legitimate, non-discriminatory reason. It is direct evidence of discrimination. And even taking up the claim, the evidence, including violations of several internal policies, creates a fact issue that the given reasons were pretextual. *See Appellee’s Brief*, pp. 40-49; *Lara’s Brief on Merits* pp. 62-70, 76.

Third, and finally, is TxDOT’s failure to preserve the issue. As Lara noted before, TxDOT’s sole argument on appeal was that Lara failed to make out a prima facie case. *Appellee’s Brief*, pp. 10-11. TxDOT did not argue that it satisfied its burden of providing a legitimate reason for firing Lara; instead, it argued only that “Lara cannot show that he was terminated solely because of his disability.” *Appellant’s Brief* p. 26. TxDOT’s after-the-fact claim is too little, too late.¹

And so, the sole issue before the Court is whether there is some evidence that TxDOT fired Lara because of his disability. On this record, the answer is yes. For that reason, affirm and remand are appropriate.

Sincerely,

SCANES & ROUTH, LLP



By:

Tyler Talbert

¹ As further support for this conclusion, the Supreme Court of Texas’ *Opinion* does not mention TxDOT’s “legitimate, non-discriminatory” reason or Lara’s obligation to show “pretext.” *See generally Opinion* (mentioning neither).

CERTIFICATE OF SERVICE

I certify that on September 24, 2021, a copy of this Letter was served by delivering it to the following by electronic service:

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/s/ Tyler Talbert

Tyler Talbert

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